

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5138 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

JAYANTILAL T PATEL

Versus

STATE OF GUJARAT

Appearance:

MR DC RAVAL for Petitioner
MR VM PANCHOLI, AGP, instructed by
M/S MG DOSHIT & CO for Respondent No. 1
RULE SERVED for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH
Date of decision: 04/08/1999

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution the petitioner who was at the relevant time working as Executive Engineer in the Roads & Building Department in the State Government has challenged the order dated 30.9.1986 compulsorily retiring the petitioner in public interest under Rule 161 of the Bombay Civil Service Rules.

2 In view of the subsequent developments during pendency of the petition it is not necessary to set out all the facts in detail. Suffice it to state that the petitioner joined the services of the State Government as Junior Engineer in June 1959. The petitioner was thereafter promoted as Deputy Engineer and subsequently as Executive Engineer. By order dated 6.12.1985 (Annexure-H) the petitioner was permitted to cross the Efficiency Bar (EB) with effect from June 1985. By the impugned order of 30.09.1986 the petitioner was compulsorily retired in public interest. The petitioner therefore filed the present petition challenging the said order.

3 The petition was resisted by the affidavit - in reply filed by the Under Secretary to the Government of Gujarat pointing out that the petitioner was ordered to be compulsorily retired from service as the petitioner's integrity was found to be doubtful. It was further stated in the reply that although the petitioner's confidential reports were good and the petitioner was allowed to cross E.B. there were sufficient grounds to doubt the integrity of the petitioner. Reference was made to four pending enquiries. This Court therefore declined to grant interim relief by passing the following order:-

"Interim relief is refused for the following reasons. The petitioner has been compulsorily retired. In the affidavit in reply, it has been pointed out that the integrity of the petitioner is doubtful and that was the reason why he has been compulsorily retired. It is not proper to continue a person in service whose integrity is doubted. In case he succeeds in the petition, he can be amply compensated. As against that if such a person of doubtful integrity is allowed to remain in service, it is likely to cause irreparable loss to the respondents."

4 The order was challenged before the Letters Patent Bench in Letters Patent Appeal No.60 of 1987. During pendency of the appeal the petitioner filed additional affidavits dated 10.12.1987 and 10.2.1988 placing on record the subsequent developments. Those developments were also pointed out in the affidavit-in-reply filed by the Government which are as under:-

"(i) In the case of Baspa-Bhadrada-Vad road, the explanation of the applicant has been accepted and the chapter has been closed. The

decision was taken by the Government on 8th April 1987.

- (ii) Another enquiry related to the non-renewal of insurance policy of truck No.GTE 7833 wherein he has been exonerated vide Government order dated 1.11.1995.
- (iii) A departmental enquiry relating to the theft of pipes and non-recovery of loss from contractors the enquiry commissioner submitted a report wherein both the charges levelled against the applicant were not proved, the report of the inquiry officer has been accepted by the Government on 12.12.1987. A decision was taken to exonerate the applicant and orders were issued vide Government order dated 22.6.1992.
- (iv) In regard to various irregularities in the construction of Kalol-Saij-Dhanoj road, the case was entrusted to the Commissioner of Enquiries. The Commissioner's Report in respect of the said inquiry had been received under letter dated 2.2.1988. In the said report it was stated that out of three charges two charges are partly proved. Only one charge is not proved against Shri Patel, and order imposing a cut of Rs.50/- in his pension for one year was made by the Government on 14.7.1992."

When the appeal came up for hearing obviously the Court had the benefit of the orders passed in the first three inquiries. As far as the fourth inquiry is concerned, the Court was informed that two out of the three charges were partly proved as per the report of the Commissioner of Inquiries submitted to the Government on 2.2.1988. The Division Bench considered the said charges levelled against the petitioner and found that they related to negligence and did not bear upon his integrity and therefore even if the two charges are held proved it cannot be said that the petitioner was lacking in integrity.

5 In view of the above developments, the Division Bench was of the opinion that the subsequent developments had a bearing on the impugned order since the learned single judge had come to the conclusion that the petitioner was of doubtful integrity only because the said four inquiries were pending against the petitioner. In view of the subsequent developments, the Division Bench set aside the previous order of the learned single

judge and remanded the matter back to the learned single judge for disposal on the question of grant of interim relief in view of the subsequent developments. The appeal was accordingly allowed by the judgement dated 4.7.1988. It appears that thereafter the question of interim relief was ultimately resolved only on 17.9.1992 when the following order was passed for reinstating the petitioner in service:-

"Mr Anand states that the departmental inquiry which was held against the applicant has resulted in his exoneration. Miss Doshit admits this to be correct. In view of this the respondents are directed to reinstate the petitioner on the same post from which he was compulsorily retired. This application stands disposed of."

Accordingly the petitioner was reinstated in service on 9.12.1992. The petitioner accordingly rendered the services as Executive Engineer from 9.12.1992 till 30.6.1993 when the petitioner retired as Executive Engineer on superannuation. The petitioner filed Civil Application No.8183 of 1996 for a direction to the respondents to treat the period from 1.12.1986 to 9.12.1992 as continuous service with all consequential benefits and arrears of salary with 18% interest.

6 At the hearing of this petition, the learned counsel for the petitioner submitted that in view of the judgement of the Letters Patent Bench and in view of the fact that the petitioner was reinstated in service as per the order passed in September 1992 and since the petitioner was exonerated in three out of four inquiries and even in the fourth enquiry the petitioner was only found to be guilty of lack of supervision or negligence and there is no material on record to show that there was any justification to entertain any doubt about the petitioner's integrity, the impugned order dated 30.9.1986 of compulsory retirement of the petitioner deserves to be set aside and the petitioner may be granted all the consequential benefits including the arrears of salary for the period from 1.10.1986 to 9.12.1992 and also other consequential benefits like seniority, pay fixation, etc.

7 On the other hand, Mr V.M. Pancholi, learned A.G.P. has submitted that when the order of compulsory retirement was passed on 30.9.1986 the Government had sufficient material to doubt the integrity of the petitioner and therefore the impugned order was legal and valid and therefore the petition deserves to be

dismissed. The learned AGP has also submitted that the Division Bench did not pass any interim or final order in favour of the petitioner and the matter was merely remanded to the learned single judge for deciding the question of interim relief. Hence, the said order could not be treated as res judicata and at the highest the order was at the interim stage.

8 Having heard the learned counsel for the parties, it is not possible to accept the contention of the learned AGP that the judgement of the Letters Patent Bench would not have any bearing on the question to be decided at this final hearing stage. In the affidavit in reply to the main petition it was admitted on behalf of the Government that confidential reports of the petitioner were good and the petitioner was also permitted to cross the E.B. in the year 1985. The only material which was referred to by the deponent of the reply affidavit to entertain the doubt about the petitioner's integrity was pendency of the four inquiries. There is no dispute about the fact that in three out of four enquiries the petitioner was completely exonerated and in the fourth enquiry the petitioner was exonerated in one charge out of the three charges and those two other charges pertained to lack of supervision and not to integrity. After referring to the report of the Commissioner of Inquiries, which was placed for consideration before the Division Bench by the State Government (and which was thereafter accepted by the State Government) the Division Bench observed as under:-

"If we turn to three charges levelled against the appellant in connection with this inquiry (Annexure-D to the petition) we find that they related to his negligence and did not bear upon his integrity and, therefore, even if the two charges are held proved it cannot be said that the appellant was lacking in integrity."

The Division Bench further observed that these subsequent developments did have a bearing on the impugned order and on the question of interim relief. Under the circumstances, this Court must proceed on the footing that the grounds on which the petitioner's integrity was doubted did not survive. Once that foundation goes, the order of compulsory retirement must also fail. Moreover, even at the interim stage this Court thought it fit to reinstate the petitioner in service as per the order passed on 18.9.1992. Consequently, the petitioner came to be reinstated in service on 10.12.1992 and thereafter the petitioner

retired on reaching the age of superannuation. For this reason also this Court would be slow to pass any order which would have the effect of nullifying the mandatory interim order passed by the learned single Judge pursuant to the observations made by the Letters Patent Bench. The impugned order dated 30.9.1986 compulsorily retiring the petitioner from service, therefore, deserves to be quashed and set aside.

9 The next question is what consequential benefits should be awarded to the petitioner. The learned counsel for the petitioner would obviously urge that the petitioner be awarded full back wages for the entire intervening period whereas the learned AGP submits that no backwages be awarded.

Having regard to the fact that the petitioner ultimately came to be exonerated in all the inquiries at least insofar as the allegation of doubtful integrity was concerned, but the petitioner was nonetheless found guilty of two charges pertaining to lack of supervision for which the the Government imposed penalty of deduction of pension to the tune of Rs.50 per month, in the facts and circumstances of the case it would be just and proper to award only 50% of the back wages from 1.11.1986 to 9.12.1992.

As far as the other consequential benefits are concerned, the petitioner would obviously be treated to be in continuous service for all purposes including for the purpose of pay fixation.

10 The petition is accordingly partly allowed. The impugned order dated 30.9.1986 compulsorily retiring the petitioner from service is declared as illegal and is set aside. The petitioner shall be treated as in continuous service between 30.9.1986 and 20.12.1992 for all purposes but the petitioner shall be paid only 50% of the back wages for the intervening period between the aforesaid dates, within three months from the date of the writ of this Court or a certified copy of this judgment, whichever is earlier.

Rule is made absolute to the above extent with no order as to costs.

(mohd)